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Comment from the
Small Business Survival Committee
on the Proposed Settlement in
United States v. Microsoft

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The Small Business Survival Committee (SBSC) believes that the proposed settlement between Microsoft Corp., the federal government and nine U.S. states in the case of United States v. Microsoft Corp. generally serves the public interest and the nation's economic well being.

In its settlement, Microsoft has agreed to a variety of restrictions on its business practices for at least five years. Microsoft also would be subject to (and have to pay for) a full-time, on-site monitoring panel of three computer experts, who would have complete access to Microsoft's software code, systems, books, records, personnel, etc.

Considering that the antitrust case against Microsoft had absolutely no basis in economic reality, and that the government brought its case at the behest of competitors--not consumers--who could not keep up in the

marketplace, we view any findings against Microsoft, and related restrictions placed on the firm, as unwarranted. However, given the costs, looming uncertainties, the current economic climate, and penchant for bad law and convoluted economics to dominate in the antitrust realm, Microsoft certainly made the correct business decision in reaching this settlement. Investor's Business Daily hit the nail on the head when it recently (January 22) editorialized:

?Late Thursday, Microsoft reported its earnings for the fourth quarter. They included a hefty charge of \$660 million, or 8 cents a share, for expenses linked to antitrust lawsuits and ongoing legal action by some states.

?Think about it: that's two-thirds of a billion dollars. It could fund a lot of research, give a lot of raises to workers, even fund more Microsoft charity around the country.?

So, the costs of this case for the company, the taxpayers and the economy in general have been formidable.

And make no mistake, these costs are felt by many small businesses. Small enterprises certainly can be affected by the costs of this antitrust case (and others) in their roles as consumers of Microsoft products, and as suppliers to Microsoft. In addition, entrepreneurship and business can be impacted by the message sent by government in a case such as this, i.e., that if a business works and competes hard to succeed and gain market share, the government may move against it through regulation and litigation. That is not a positive economic message for government to be broadcasting into the marketplace.

Microsoft, the many businesses which serve as its suppliers and consumers, and the software industry have been placed at risk due to the government's long antitrust inquisition against Microsoft, and real costs have been incurred. The government's antitrust case against Microsoft has boosted costs, increased uncertainty in the high-tech community, and thereby, hurt the entire U.S. economy.

Looking ahead, it is quite disturbing that government officials--including regulators, lawyers, and judges--have the ability to impose their own anachronistic views of how markets should work on the rest of us, including the high-tech industries of today and tomorrow. Antitrust regulation remains a dangerous wild card in the marketplace. Depending how the latest political breezes happen to be blowing, our nation's most successful companies are in a position to be punished for their success via antitrust actions.

Antitrust law is regularly presented as a bulwark of competition and free markets. In reality, however, antitrust law, for the most part, is distinctly anti-market and anti-competition because it allows government bureaucrats or judges to overrule decisions made by consumers in the

marketplace. In the end, government antitrust actions in this case have amounted to nothing more than an effort to protect some of Microsoft's current rivals from the rigors of competition, and/or an effort to expand the reach and control of government.

It needs to be understood that in the free market, businesses compete against current and future competitors. The rapid pace of innovation in the computer industry makes this abundantly clear. Therefore, many antitrust actions exhibit an inability on the part of regulators, government lawyers and some judges to understand the dynamic nature of the marketplace. Markets are not static. The classroom lesson about "perfect competition" does not exist in the real world. Instead, the economy involves a rough-and-tumble competitive process whereby entrepreneurs and businesses create new products and services, innovations, and efficiencies, often generating temporary monopolies that are then obliterated by competitors. Prices and profits act as signals in the marketplace to other businesses and entrepreneurs. An activist antitrust regime, as was exhibited over the past several years in the Microsoft case, disrupts this beneficial economic process.

The fact that antitrust law looms unchanged--to be erratically used as a club by government--will continue to cast a shadow over the U.S. economy, particularly dynamic high-tech industries in which temporary monopolies are the clear rule.

Ideally, the Microsoft case should have been dropped altogether, and looking ahead, dramatic antitrust reform needs to be undertaken to reflect economic reality.

Short of such action though, a settlement in this case, which obviously steps far back from a proposed break up of Microsoft, makes sense. Hopefully, since much of the government's case has been thrown out or overturned, perhaps this Microsoft settlement will serve as a warning that antitrust restraint on the part of the government far better serves consumers, entrepreneurship and innovation, than does antitrust activism.

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